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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,866	07/17/2003	Christian Aichinger	CS7853/LeA 35,958	1752

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EXAMINER	
ZEMAN, ROBERT A	

ART UNIT	PAPER NUMBER
1645	

MAIL DATE	DELIVERY MODE
01/07/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/621,866	AICHINGER ET AL.	
	Examiner	Art Unit	
	ROBERT A. ZEMAN	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 September 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2 and 12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The amendment filed on 9-12-2008 is acknowledged. Claim 1 has been amended. Claims 3-11 have been canceled. Claim 12 has been added. Claims 1, 2 and 12 are pending and currently under examination.

Priority

Applicant's claim for benefit of foreign priority under 35 U.S.C. 119(a)-(d) prior to declaration of an interference is deemed to be perfected in light of the submission of a certified English translation of the foreign application.

Objections Withdrawn

The objection to the specification of the use of the trademark Chlorox™ is withdrawn in light of Applicant's arguments.

The objection to claim 9 under 37 CFR 1.75 as being a substantial duplicate of claim 1 is withdrawn. Cancellation of said claim has rendered the rejection moot.

Claim Rejections Withdrawn

The rejection of claims 1-3 and 9 under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps is withdrawn in light of the amendment to claim 1 and the cancellation of claims 3 and 9.

The rejection of claims 1-2 and 9 under 35 U.S.C. 112, second paragraph, as being indefinite since performing the claimed method steps would not necessarily achieve the goal of

the claim as stated in the preamble of claim 1 is withdrawn in light of the amendment to claim 1 and the cancellation of claim 9.

The rejection of claims 1, 3 and 9 under 35 U.S.C. 102(b) as being anticipated by Vaddi et al. (WO 00/23614) is withdrawn in light of the amendment to claim 1 and the cancellation of claims 3 and 9.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaddi et al. (WO 00/23614) and Mellgren et al. (Journal of Biological Chemistry 1997, 272(47),

29899-29903 -- IDS filed on 1-9-2004) for essentially the reasons set forth in the previous Office action in the rejection of claims 1-3 and 9.

Applicant argues:

1. Neither Vaddi et al. nor Mellgren et al. disclose the use of DMSO at a concentration of 2 to 10%.

Applicant's arguments have been fully considered and deemed non-persuasive.

Vaddi et al. disclose a method of measuring the efficacy of drugs by measuring their ability to serve as 20S proteasome inhibitors *in vivo* (see abstract). Vaddi et al. further disclose that said method can be used to determine the efficacy of a given "drug" to treat a variety of maladies including sepsis (see page 10, lines 16-20). Given that "sepsis" by definition includes fungal infections, Vaddi et al. necessarily discloses a method of identifying effective fungicides (mycotics). Moreover, Vaddi et al. disclose that any assay method for determining proteosome activity can be used (see page 11, lines 25-26) which would necessarily encompass high throughput screening assays. Finally, Vaddi et al. disclose that their method is carried out in the presence of 1% DMSO (see page 21).

Vaddi et al. differs from the instant invention in that they don't specifically disclose the use of fungal 20S proteasomes in their method or the use of DMSO at a concentration of 2 to 10%..

Mellgren discloses that *S. cerevisiae* was not affected by proteosome inhibitors (peptidyl inhibitors) that were demonstrated to inhibit human 20S proteosomes (see page 29901) indicating that the efficacy of a given protease inhibitor may be proteosome specific.

Consequently, it would have been obvious for one of ordinary skill in the art at the time the invention was made to utilize fungal 20S proteasomes in the method of Vaddi et al. in order to reduce the number of false negatives associated with the use of non-fungal proteasomes in evaluating a fungicide.

It is deemed that the concentration of DMSO constitutes an obvious optimization of an experimental parameter.

New Grounds of Rejection

35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaddi et al. {WO 00/23614).

Vaddi et al. disclose a method of measuring the efficacy of drugs by measuring their ability to serve as 20S proteasome inhibitors *in vivo* (see abstract). Vaddi et al. further disclose that said method can be used to determine the efficacy of a given "drug" to treat a variety of maladies including sepsis (see page 10, lines 16-20). Given that "sepsis" by definition includes fungal infections, Vaddi et al. necessarily discloses a method of identifying effective fungicides (mycotics). Moreover, Vaddi et al. disclose that any assay method for determining proteosome activity can be used (see page 11, lines 25-26) which would necessarily encompass high throughput screening assays. Finally, Vaddi et al. disclose that their method is carried out in the presence of 1% DMSO (see page 21).

Vaddi et al. differs from the instant invention in that they don't specifically disclose the use of DMSO at a concentration of 2 to 10%..

Given that the concentration of DMSO constitutes an obvious optimization of an experimental parameter Vaddi et al. renders the instant claims obvious.

Conclusion

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT A. ZEMAN whose telephone number is (571)272-0866. The examiner can normally be reached on Monday- Thursday, 7am -5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Mondesi can be reached on (571) 272-0956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert A. Zeman/
Primary Examiner, Art Unit 1645
January 5, 2009